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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7673 of 2006

Shri Rohidas Bhagirath Bhati .. Petitioner

versus

State of Maharashtra & ors. .. Respondents

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Mr.A.V. Anturkar i/b S.B. Deshmukh for the petitioner

Mr.R.S. Apte with Mr.A.A. Garge for respondent no.3.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 9th October 2007

P.C.:

1. Heard. Rule. Returnable forthwith. By consent, called for hearing.

2. By this petition, petitioner challenges the notification dated 18th August 2006 issued by the Government of Maharashtra, Urban Development Department re-introducing the reservation of property no.E-42 (reservation no.57-B) on the petitioner's

property. The petitioner's property was initially reserved for a public purpose in development plan of the respondent no.3 municipal council. It appears that the said reservation was dropped as the land was not needed for the public purpose as per the resolution of respondent no.3. However, the reservation was re-introduced vide notification no.TPS-18696/751/CR-283/06/UD-13 issued by the Government of Maharashtra, Urban Development Department on 18th August 2006. The said notification is impugned in this petition.

3. On rejection of permission for development issued a notice u/s.49 of the Maharashtra Regional Town Planning Act (for short "MRTP Act") requesting the respondents to acquire the land and pay compensation. As no steps were taken the petitioner has moved this court by the present writ petition. When the petition came up for hearing before this court, Mr.Anturkar, learned counsel for the petitioner submitted that either the land should be acquired and compensation should be paid to the petitioner or the land should be released. We therefore called upon the respondent no.3 to state whether the respondent no.3 requires the said land for any public purpose. On 9th August 2007, on instructions of the Chief Executive Officer of the

respondent no.3 municipal council, the counsel made a statement before the court that the petitioner's land is not required by respondent no.3 for any public purpose and a resolution to that effect would be moved in the general body of the respondent no.3 municipal council. Today, the learned counsel for respondent no.3 handed over to us a copy of the resolution no.105 dated 21st August 2007 passed by the General body of the respondent no.3. The resolution states that the Collector vide his letter had informed the municipal council to deposit Rs.1,00,05,600/- (One crore five thousand six hundred) being the 2/3rd amount of the estimated compensation that may be required to be paid to the petitioner in the event the land is to be acquired for the purpose of respondent no.3. The general body of the respondent no.3 thereafter considered the matter and also considered that a large portion of the land was affected by the high tension electric supply lines and therefore would not be useful for the public purpose for which it was reserved. The general body, therefore, resolved not to acquire the land. The resolution states that the reservations no.57-B be deleted from the development plan and as the land is not required by the respondent no.3 municipal council. Mr.Sonawane, learned AGP states that if the resolution of the municipal council is

forwarded to it, the government would take necessary steps regarding for deletion of the reservation.

4. In view of what is stated above, we direct the respondent.3 to submit the necessary proposal to the respondent no.1 State Government for modification of the development plan on the ground that the land under Reservation no.57-B is not required by respondent no.3. The proposal shall be submitted within two months, after following the proper procedure therefor. On receipt of the necessary proposal for modification, the respondent no.1 shall consider the said proposal and pass appropriate orders under section 37 of the MRTP Act within three months of receipt of the proposal. Rule is made absolute to the extent indicated above.

(D.G. KARNIK, J) (S.B. MHASE,J)